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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the
Child on the involvement of children
in armed conflicts
Sixth session
Geneva, 10 - 21 January 2000

Comments on the report of the working group

Report of the Secretary-General

1. In paragraph 17 of its resolution 1999/80 of 28 April 1999, entitled "Rights of the child", the Commision on Human Rights requested the Secretary-General to transmit the report of the working group on a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts on its fifth session (E/CN.4/1999/73) to Governments, relevant United Nations bodies and specialized agencies, the Committee on the Rights of the Child, the Special Representative of the Secretary-General on the question of the impact of armed conflict on children, and intergovernmental and non-governmental organizations, and to invite their comments in time for circulation prior to the next session of the working group.

2. Pursuant to that resolution, the Secretary-General, on 20 September 1999, addressed requests to Governments, United Nations bodies, specialized agencies, the Committee on the Rights of the Child and intergovernmental and non-governmental organizations concerned, for comments on the report of the working group on its fifth session.

3. By 12 November 1999, a reply had been received from the Friends World Committee for Consultation (Quakers). The present report contains a summary of the comments received. Any additional replies will be reproduced in an addendum to the present document.

Friends World Committee for Consultation (Quakers)

[Original: English]
[6 November 1999]

In response to resolution 1999/80 of the Commission on Human Rights, Friends World Committee for Consultation (Quakers), an international non-governmental organization in special consultative status with the Economic and Social Council, would like to submit the following comments on behalf of the Coalition to Stop the Use of Child Soldiers[1] and the NGO Sub-Group on Refugee Children and Children in Armed Conflict[2] with regard to the draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflict.

The experience[3] over the five years since the working group to draft this optional protocol was established by the Commission on Human Rights has led to a much greater knowledge and understanding of the causes and effects (both direct and indirect) of the involvement of children in armed forces and armed groups and their participation in combat.

Child soldiers are victims of a broad range of human rights violations: not only are they exposed to the likelihood of death and injury in combat, but also at other times, for example if they try to avoid recruitment, to escape, disobey orders, or are unable to keep up. Furthermore, they are exposed[4] to torture and ill-treatment, sexual exploitation, health hazards, drug and alcohol abuse, separation from family, deprivation of education and, if captured, to summary execution, prolonged detention, torture, charges for war crimes or treason. These are only a few examples, and the particular effects - physical and psychological - in relation to those who are still progressing through the physical, mental, emotional and moral developmental stages to adulthood have to be borne in mind.[5] In addition, the impact on these children of themselves being the perpetrators needs to be considered since they themselves also kill, injure, torture, rape and commit violent acts against others (including other children) and come to understand the power given by possession of a weapon. The difficulty of demobilizing and reintegrating such children into peacetime society and values is one of the greatest challenges currently facing a number of post-conflict societies or those seeking to move from conflict to peace.

The only way to ensure non-participation of children in hostilities is not to recruit them. International humanitarian law makes a fundamental distinction between civilians and combatants. Members of the armed forces are entitled to be combatants. That means that during an armed conflict they are permitted to kill and to be killed since they are also lawful objects of attack. States who recruit under-18s while claiming that they would not participate in hostilities are, therefore, either gambling on not becoming involved in an armed conflict or are proposing a separate category of members of the armed forces who are not entitled to be combatants. This is not only unsound in law but given the existing difficulties in reality of maintaining the distinction between civilians and combatants is completely impractical and may add to the dangers for civilians.

The conclusion is that we wish to reiterate in the strongest terms that all those defined by international law as children have no place in armed forces or armed groups nor as participants in hostilities. Article 38 of the Convention on the Rights of the Child is the only specific

lowering of the general age of adulthood set at 18 years by article 1 of the Convention [6] The question is not how much difference does it really make between 16, 17 and 18 years the fundamental point is the distinction between children and adults It is essential to ensure that any standard established by the United Nations makes a clear distinction between adults and children in this respect To do otherwise, is to compound the original failure of the Convention on the Rights of the Child and as such is completely unacceptable in law and principle At the same time, the practical implication will be that on the ground it will undermine the developing consensus (in regional and national law and unilateral commitments) and will continue to place children in jeopardy because of doubts over precise age, functions served, likelihood of participation in combat and so forth

In this context, we would like to draw attention to the results of the International Committee of the Red Cross (ICRC) worldwide consultation on the rules of war, "People on War" In response to the question "At what age is a young person mature enough to be a combatant", 88 per cent stated 18 years or above, of whom 35 per cent stated "over 21 years" [7]

We consider the draft optional protocol which NGOs submitted to the United Nations in response to Commission on Human Rights resolution 1998/76,[8] to constitute a clear, workable and achievable standard, given that this would in any case be an optional protocol and as such only binding on those States which choose to become parties to it The current recruitment and deployment laws and practices of the small number of States unwilliing to accept 18 as the minimum age for all forms of recruitment and participation in hostilities should not be permitted to become an obstacle to the protection of the world's children As the United Nations High Commissioner for Human Rights stated to this working group in 1998, "national legislation should not be presented as an obstacle to the elaboration of more advanced international standards" [9] Over the past five years, many States have indeed changed their recruitment and deployment laws and practices in order to align them with the emerging international consensus on non-recruitment and non-participation of under-18s We welcome these changes in themselves and as further evidence of increased understanding and the trend towards better protection of children in this area We also welcome the developing political support, most recently from the OAU Summit,[10] from the Declaration by the Nordic Foreign Ministers,[11] and by the United Nations Secretary-General in his report to the Security Council on protection of civilians in armed conflict, where he not only drew attention to his policy in relation to the minimum age of United Nations peacekeepers but also recommended that the Security Council "Urge Member States to support the proposal to raise the minimum age for recruitment and participation in hostilities to 18" [12]

Notes

[1] The Steering Committee of the Coalition comprises Amnesty International, Defence for Children International, Human Rights Watch, Jesuit Refugee Service, International Federation Terre des Hommes, Quaker UN Office (Geneva), Rädda Barnen (on behalf of the International Save the Children Alliance), World Vision International and regional representatives from Africa (ANPPCAN, African Union for Child Welfare, DCI-Africa) and Latin America (CONAVIGUA-Guatemala, DNI-Uruguay, Colombian Coalition).

[2] This is one of the thematic sub-groups of the NGO Group for the Convention on the Rights of the Child.

[3] This experience includes the whole process of (including research for) the study on the impact of armed conflict on children (the Machel study), the development and pilot testing in regional workshops of the UNHCR/Save the Children Alliance, Action for the Rights of Children (ARC) training modules, the Cape Town Workshop on Prevention of Recruitment, Demobilization and Social Reintegration of Child Soldiers in Africa, the various field programmes with child soldiers, displaced and refugee children and war-affected children, the research undertaken by individual NGOs and by the Coalition to Stop the Use of Child Soldiers and most recently the experience gathered by the regional conferences organized by the Coalition to Stop the Use of Child Soldiers in collaboration with other organizations and host Governments.

[4] Violating many articles of the Convention on the Rights of the Child, including article 19 requiring States parties to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

[5] It is worth noting in this context that the Lusophone participants in the African Regional Conference to Stop the Use of Child Soldiers (Maputo, Mozambique, April 1999) were adamant that while 18 might be acceptable as the minimum age for recruitment it was too young for participation in combat, for which the minimum age should be 21 years, and that the First Mini-Summit of African Children stated "the minimum age for joining the army has to be put at 21 years. This act should be voluntary" (Yaoundé, July 1996).

[6] ILO Convention No. 182 on the Worst Forms of Child Labour unequivocally states that a child is all persons up to the age of 18 years, explicitly prohibits forced or compulsory recruitment of children for use in armed conflict and enables States to go further by providing for the prohibition of other work likely to harm the health, safety or morals of children.

[7] ICRC presentation to the 27th International Conference of the Red Cross and the Red Crescent, Geneva, 1 November 1999.

[8] Contained in document E/CN.4/1999/WG.13/2 of 23 October 1998 - available in English, French and Spanish.

[9] E/CN.4/1998/102, para. 38, of 23 March 1998.

[10] CM/Dec.482(LXX), decision on the African Conference on the Use of Children as Soldiers, endorsed by the OAU Assembly of Heads of State and Governments without amendment, July 1999, Algiers.

[11] Declaration by the Nordic Foreign Ministers against the use of child soldiers, Egilsstadir, Iceland, 29 August 1999.

[12] S/1999/957 of 8 September 1999, para. 42.